TEO BOON ANN

v.

PUBLIC PROSECUTOR

COURT OF APPEAL, SINGAPORE
TS SINNATHURAY J
LAI KEW CHAI J
LP THEAN J
[CRIMINAL APPEAL NO. 1 OF 1987]
18 MAY 1989

CRIMINAL PROCEDURE: *Appeal against conviction - Whether findings of trial Judges under limb (b) or (c) of s. 300 Penal Code - Whether ambiguous.*

The appellant was tried and convicted by the High Court of having on 31 October 1983 in a flat committed murder by causing the death of one Chong Kin Meng aged 66 years contrary to s. 302 of the Penal Code.

The appellant had committed the offence in the course of a robbery. In his voluntary statement to the police he admitted hitting the deceased with a stool but claimed that he did not murder her. However the evidence of one Tan Chai Mui was important in that the appellant had telephoned and asked her if she dared to accompany him to rob the deceased and that they were to gain entry into the flat on the pretext of delivering a wedding dinner invitation card, that after entry valuables in the flat would be taken, and if they were discovered, the old lady would be struck on the head till she lost consciousness and if she did not, she was to be beaten to death.

It was argued on behalf of the appellant that the trial Judges were ambiguous in their findings with the result that one was not sure if they found under limb (b) or limb (c) of s. 300 of the Penal Code. On one part of their judgment the trial Judges found that the appellant's act was done with the intention of causing such bodily injuries with the knowledge that they would result in the death of the deceased, which finding would come under limb (b) and that in doing so the trial Judge had relied on the testimony of Tan Chai Mui about the striking and the killing. On the other hand it was said that the trial Judges also found that the appellant had the intention of inflicting injuries which in the ordinary cause of nature would cause death which would come under limb (c).

The Counsel for the appellant also argued that it was unsafe to rely on the evidence of Tan Chai Mui and also submitted that the trial Judges had failed to find, as they were required to under limb (c), that the appellant had inflicted a particular injury which in the ordinary course of nature would cause death; that the inflicting of the injury was not accidental or unintentional or that some other kind of injury was intended.

Held:

[1] It was up to the trial Judges on the evidence to accept or reject the evidence of Tan Chai Mui. They accepted her evidence and had given reasons for doing so. The way the appellant had assaulted the deceased was further evidence of the clear and indisputable intention to kill Madam Chong. The injuries and the manner they were inflicted spoke for themselves. The striking of the head was followed by the manual act of strangulation.

[2] The trial Judges in their judgment read as a whole must have in mind the fatal injuries suffered by Madam Chong and that there was really in substance no confusion on this point. The evidence clearly established murder either under limb (b) or limb (c) of s. 300 of the Penal Code.

[Appeal dismissed.]

Case referred to:
Mimi Wong & Anor. v. PP [1972] 2 MLJ 75

Legislation referred to:
Penal Code [Sing], ss. 300, 302

For the appellant - Loh Lin Kok
For the respondent - Loke Yoon Kee

JUDGMENT

TS Sinnathuray J:

The appellant, who at the material time was 23 years old, an odd-job labourer and who also practised as a part-time temple medium, was tried and convicted by the High Court of two Judges of having on 31 October 1983 in a flat committed murder by causing the death of a frail lady, Chong Kin Meng, aged 66 years, contrary to s. 302 of the Penal Code. He committed the offence in the course of a robbery. His appeal against the conviction was dismissed by us.

The deceased was living in the flat with her foster son, Woo, and his recently married wife. At about 6.30 p.m. on 31 October 1983 Woo's wife returned to the locked flat and found the deceased lying on her right side on the kitchen floor. Her head was covered with 3 or 4 pieces of clothing. Police and ambulance officers, who were summoned, arrived at the flat and found the deceased dead. They also found that a stool, made up of a wooden seat on 4 iron legs, was not in its normal position in the flat. Its seat was found dislodged from its wooden base. Also found on the cooker in the kitchen was a red wedding dinner invitation card, wrapped in a white letterhead paper, which were held together by a rubber band. It was subsequently established that the wedding invitation card linked the appellant to the scene of crime. The card was addressed to the parents of the appellant and the letterhead paper had the appellant's left thumb print on it. Further, the handwriting on the letterhead paper which referred to the address of the flat of the deceased was in the opinion of an expert document examiner consistent with the appellant's specimen handwriting.

The deceased suffered severe internal and external injuries. Her tongue was protruding between her dentures. The pathologist opined that the severe injuries on her face, sides of the head, the scalp and the bleeding of the brain were consistent with her having been hit with an object like a stool. His opinion was that the cause of death was oedema which resulted from the bleeding in the brain and from strangulation by hand and not by ligature. In his opinion, either cause could have resulted in death. But the protrusion of her tongue in gasping efforts led him to conclude that the hitting took place first and that strungulation was done later.

The appellant was arrested on 11 November 1983 and in his voluntary statement to the police he admitted hitting the deceased with a stool after she put up a struggle. But he claimed he did not murder her and did not recall why he went to the flat. Further, the father of the

accused wanted to find out how his wedding invitation card came to be in the deceased's flat and Woo wanted to know the truth. They wanted to consult the deity through the appellant who practised as a temple medium. The appellant went into two trances on 8 November 1983. The second trance was witnessed by Woo and his wife. In the trances, the appellant spoke in Cantonese, though he normally spoke in the Hokkien dialect, and could mimic the voice of the deceased. He also re-enacted the deceased's position on the floor after her death and drew a sketch of the flat.

We must now refer to the evidence of one Tan Chai Mui who was then 20-years old and was so gullible and naive that the appellant could, in telephone conversations with her, mimic two different voices and assume two different names, one of which was "Ah Seng". The importance of her evidence was that at about 1p.m. on the day of the killing the appellant in the assumed personality of "Ah Seng" had telephoned her and asked her if she dared to accompany him to rob the deceased. He further told her that they were to gain entry into the flat on the pretext of delivering a wedding dinner invitation card to the old lady's foster son, that after entry valuables in the flat would be taken, and if they were discovered, the old lady would be struck on the head till she lost consciousness and if she did not she was to be beaten to death. Tan Chai Mui said in evidence that she advised "Ah Seng" against doing any such thing. We should add that the appellant had befriended Tan Chai Mui, who had yet to have a boy friend, on 12 April 1983. In the course of the 7-month friendship they went out and he borrowed from her in cash and kind, which totalled about $3,000, to pay off his debts. She kept a detailed diary of the friendship in which she recorded "Ah Seng's" robbery proposal conversation in one sentence, "Asked Min Hua (meaning the appellant) and I whether we dared to go there". She explained that she did not record the other details because she did not believe that "Ah Seng" was planning a robbery or killing.

Referring to the case for the prosecution at the close of its case, the trial Judges said:

> At the close of the prosecution case, we found established to our satisfaction that:
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> (a) it was you who entered the deceased's flat between 11a.m. and 6.30 p.m. on 31 October 1983;
>
> (b) you did so with the intention of robbery;
>
> (c) if you were discovered by her, Madam Chong, in the course of the robbery, she was to be struck on the head till she was unconscious and, if necessary, beaten to death;
>
> (d) the injuries inflicted on her were such as you knew to be likely to cause her death and it was you who inflicted those injuries.
>
> We therefore found that a case had been made out against you which, if unrebutted, would warrant your conviction on the charge against you.

The appellant elected to give evidence on affirmation. He admitted going to the deceased's flat to take valuables. But he seriously challenged Tan Chai Mui's evidence about striking the deceased on the head until she lost consciousness and, if she was still not unconscious, she was to be killed. He claimed that his intention was merely to rob the deceased and not to kill her. The trial Judges rejected this part of this evidence. The appellant further said in evidence that when Madam Chong discovered him ransacking the drawers of her dressing table, she tried to make a telephone call. He stopped her. He wanted to pick up the invitation card and leave but she picked up a knife to stab him. He disarmed her by putting his right hand on her neck until she said "No breath, no breath," dropped the knife and fell down.

After this episode, he said he tried to take back the invitation card and flee but Madam Chong picked up the knife again, got up and tried to stab him again. It was then that he picked up the stool and pushed it at her face until she fell. He said the stool fell on her face. He also fell on her.

The trial Judges rejected the defences that (a) there was no intention to kill; (b) death took place while the appellant was in good faith exercising the right of private defence of his person; and (c) there was a sudden fight. They formed the view that the appellant had intended to kill Madam Chong if striking her failed to render her unconscious and that he had killed her to ensure he would not be identified later. They also disbelieved his story about Madam Chong trying to stab him with the knife or that she had sustained the injuries in the way he had described it. The trial Judges were of the view that the appellant's retaliation as shown by the severity of the injuries and the comparative age, strength, height of the injuries of the appellant and Madam Chong, was far in excess of the right of private defence. Further, the trial Judges found that there was no sudden fight in the accepted legal sense and that even if there was, the appellant had taken undue advantage of the victim and had acted in a cruel or unusual manner. Accordingly they held that there was no circumstances justifying a verdict of culpable homicide not amounting to murder.

In the appeal it was canvassed on behalf of the appellant that the trial Judges were ambiguous in their findings with the result that one was not sure if they found under limb (b) or limb (c) of s. 300 of the Penal Code. Counsel for the appellant asserted that in one part of their judgment the trial Judges found that the appellant's act was done with the intention of causing such bodily injuries with the knowledge that they would result in the death of the deceased, which finding would come within limb (b) of s. 300 of the Penal Code. In doing so, Counsel submitted that the trial Judges had relied on the evidence of Tan Chai Mui about the striking and the killing. On the other hand, and later in the judgment, it was said that the trial Judges also found that the appellant had the intention of inflicting injuries which in the ordinary cause of nature would cause death, which finding would appear to come within limb (c) of s. 300 of the Penal Code.

Section 300 of the Penal Code and the relevant limbs thereof read as follows:

> Except in the cases hereinafter excepted culpable homicide is murder:
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> (a) if the act by which the death is caused is done with the intention of causing death;
>
> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm caused;
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

Counsel for the appellant further submitted that it was unsafe to rely on the evidence of Tan Chai Mui on a number of grounds. She had discovered on 14 November 1983 at the CID that he was a married man and it was not without significance that she was angry and that it was after this that she had made the statement incriminating the appellant in that material respect. She was also his creditor. Further, Counsel observed that it was very odd that Tan Chai Mui had omitted recording the material parts of the alleged telephone conversation as to the appellant's intention.

Finally, Counsel for the appellant submitted that the trial Judges had failed to find, as they were required to under limb (c) of s. 300 of the Penal Code, that the appellant had inflicted a particular injury which in the ordinary course of nature would cause death; in other words,

that the inflicting of the injury was not accidental or unintentional of that some other kind of injury was intended. For that submission, he relied on the relevant part of the judgment of this Court in *Mimi Wong & Anor. v. PP* [1972] 2 MLJ 75, 78D-F/G.

In reply, the DPP submitted that it was up to the trial Judges on the evidence to accept or reject the evidence of Tan Chai Mui. They accepted her evidence and had given reasons for doing so. He further submitted that the way the appellant had assaulted the deceased was further evidence of the clear and indisputable intention to kill Madam Chong. He said the injuries and the manner they were inflicted spoke for themselves. The striking of the head was followed by the manual act of strangulation. With regard to the submission that the trial Judges had not specifically found that the appellant had intended to inflict a specific injury to come within limb (c) of s. 300 of the Penal Code, the DPP in answer submitted that the trial Judges in their judgment read as a whole must have in mind the fatal injuries suffered by Madam Chong and that there was really in substance no confusion on this point. The DPP finally submitted that the evidence clearly established murder either under limb (a) or limb (c) of s. 300 of the Penal Code. We came to the conclusion that the appeal must be dismissed. We accepted the submissions of the DPP which effectively answered the point raised in the appeal.

Also found at [1990] 1 CLJ 206